IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 98 of 1999

HONOURABLE MR.JUSTICE R.P.DHOLAKIA

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHUNILAL HOLIYABHAI VASAVA - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
THROUGH JAIL for Appellant(s) : 1,MS NITA C BANKER for Appellant(s) : 1,
MR KP RAVAL, APP, for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE KS JHAVERI

Date : 27/09/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE KS JHAVERI)

1.0 This appeal is directed against the judgement and order of conviction and sentence passed by Additional Sessions Judge, Surat, dated 18th January 1999, in Sessions Case No.11 of 1997, whereby the learned Judge has convicted the appellant accused for the offence under section 302 of IPC and ordered to undergo imprisonment for life and fine of Rs.1000/-, in default, to suffer simple imprisonment for six months, and convicted under section 323 of IPC and ordered to undergo imprisonment for six months and fine of Rs.200/-, in default, to undergo further imprisonment for one month. Both the sentences are ordered to run concurrently.

2.0 The prosecution case, in short, is as under:

2.1 On 24th September 1996 Dineshbhai Gumlabhai was given dinner by his mother Savitaben and thereafter he

had gone out. At about 21 hours she heard shouts against Dineshbhai from the opposite house of Chunilal Chavi. Savitaben went there and saw that the appellant-accused was assaulting Dineshbhai with a wooden log. Dineshbhai got injuries on his head and face. When Savitaben intervened she also received injuries and when she raised shouts the appellant-accused ran away from the scene of offence.

2.2 On hearing her shouts, her daughter and Sumabhai, son-in-law of Savitaben came there. Savitaben informed them about the incident. At that time his other son Thakorebhai Gomlabhai also came there along with his wife. Both Savitaben and Dineshbhai were lying on the floor. Thakorebhai asked his mother as to what happened. She replied that Chunilal by asking as to why Dineshbhai is keeping illicit relation with his wife, started attacking Dineshbhai with a wooden log and when she intervened she also received injuries.

2.3 Thakorebhai thereafter went to Sarpanch and informed him about the incident and then went to Vankal Police Outpost and gave the complaint. Police Jamadar Sardarsinh Madhavsinh Gohil has written down the complaint. On the basis of the same, the complaint was registered with Mangrol Police Station as C.R. No.76/1996. Upon receipt of the complaint Police Sub Inspector Shri G. Amarsing went to the place of incident and prepared panchnama of scene of offence, recorded

statements of witnesses, prepared inquest panchnama and panchnama of clothes of dead body and the muddamal articles were sent for FSL investigation.

2.4 The appellant-accused was arrested and after completing the investigation chargesheet was filed in the Court of learned Judicial Magistrate, First Court, Mangrol. Since the case was exclusively triable by the Court of Sessions, learned Judicial Magistrate, First Class, Mangrol, committed the case to Court of Sessions, Surat, under section 209 of the Criminal Procedure Code.

2.5 The case was numbered as Sessions Case No.11 of 1997. Since the appellant-accused has not pleaded guilty, charge was framed against him and after recording evidence and on submission of closing purshish by the prosecution, learned Additional Sessions Judge, Surat, recorded further statement of the appellant-accused under section 313 of CrPC. Thereafter, after hearing the learned Advocates for the respective parties, learned Additional sessions Judge delivered the aforesaid judgement and order of conviction and sentence, against which the present appeal has been filed.

3.0 Mrs Nita Banker, learned advocate for the appellant-accused submitted that the prosecution has not proved the case against the appellant beyond doubt. She submitted that the presence of the accused is not established and the attack was with wooden log and

looking to the peculiar facts and circumstances of the case the Sessions Court has wrongly imposed the conviction of imprisonment for life. She further submitted that the witnesses who were examined are all relatives of the deceased and on their evidence the learned Sessions Judge ought not to have convicted the appellant. She therefore submitted that the impugned judgement and order of conviction and sentence requires to be quashed and set aside.

4.0 Mr. K.P. Raval, learned APP appearing for the State supported the judgement of the sessions Court and submitted that no interference of this Court is called for in this appeal. He submitted that in view of the evidence of Savitaben (PW7-Exh.26) who is the mother of the deceased and who was present at the scene of offence, the prosecution has established the case against the appellant-accused beyond doubt. He submitted that Savitaben has also injured in the incident and the postmortem report clearly supports other evidence on record. He, therefore, submitted that this Court may not interfere in the appeal.

5.0 We have heard the learned Advocates for the respective parties and gone through the judgement and order of conviction and sentence and all other relevant record pertaining to the present case. The prosecution has examined, in all, following 14 witnesses.

1. Thakorebhai Gemalbhai Vasava (Exh.13)
2. Rahjibhai Ratnabhai Vasava (Exh.15)
3. Bekrabhai Ramjibhai (Exh.21)
4. Balubhai Kamalbhai Chaudhary (Exh.23)
5. Kanjibhai Mansingbhai Vasava (Exh.24)
6. Prabhubhai Soniyabhai vasava (Exh.25)
7. Savitaben Gomlabhai Vasava (Exh.26)
8. Sumabhai Damjibhai Vasava (Exh.27)
9. Dr. Jayantilal Vasantjibhai Gamit (Exh.28)
10. Sardarsinh Madhavsinh Gohil (Exh.32)
11. Ravalbhai Devchandbhai Patil (Exh.33)
12. Karsanbhai Viriyabhai (Exh.35)
13. Gangasagar Mukhlalsinh (Exh.37)
14. Sardarsinh Madhavsinh Gohil (Exh.40).

5.1 The prosecution has also produced the following documents on record in order to establish the case against the appellant-accused:

1. Complaint-Exh.14.
2. Inquest Panchnama-Exh.16
3. Panchnama of scene of offence-Exh.17
4. Panchnama of body of the accused – Exh.19
5. Discovery panchnama of muddamal weapon-Exh.22
6. Receipt of entry note-Exh.29
7. Injury certificate in respect of Savitaben- Exh.30
8. Receipt in respect of FSL Report-Exh.38
9. Panchnama of cloths of deceased Dineshbhai-Exh.20

6.0 The prosecution has examined Savitaben Vasava (PW7), who was present at the scene of offence and who

had also suffered injuries, at Exh.26. According to this witness, on hearing the shouts for help, she had gone to the place of incident and she saw that the appellant-accused was assaulting the victim on the face and head of Dineshbhai with wooden log and he fell down. When she intervened, the appellant-accused, assaulted this witness also as a result of which she also fell down. According to her, Dinesh had succumbed to the injuries at the scene of offence itself. She has identified the appellant-accused in the Court. She has also identified the muddamal weapon - the wooden log used by the appellant.

6.1 Sumabhai Vasava (PW8) was examined at Exh.27. He is brother-in-law of deceased Dineshbhai. On hearing the shouts of Savitaben, he along his wife had rushed to the place of incident. They saw Savitaben lying in injured condition and Dineshbhai had died. He in his deposition stated that on inquiry the mother-in-law informed that Chunilal has assaulted her and Dineshbhai and therefore he made suitable arrangement for treatment. So far as his evidence is concerned, he is the person who has revealed the scene of incidence and Savitaben has informed about the role of accused-appellant.

6.2 In view of the above it is clear that the death was caused due to the injuries suffered by Dineshbhai. Most of the injuries are on the face and head of the deceased. Witness Savitaben (PW7) is eye witness to the incident.

She has clearly narrated the incident in question. She has stated that the appellant-accused has assaulted on the face and head of Dineshbhai and when she intervened he has also assaulted her. She has also suffered injuries and certificate to that effect is produced at Exh.30. The injury certificate shows that she was having (1) bleeding from Lt. Ear, (2) irregular margin cut of lower lobule ear and (3) temporal and frontal head tenderness- no injury mark. This would establish that she was present at the scene of offence. Looking to the postmortem report and the evidence of Savitaben (PW7), it is clear that the appellant has assaulted Dineshbhai as a result of which he has succumbed to the injuries. Therefore the prosecution was able to establish that it was a homicidal death in view of the clear medical evidence like postmortem note. The prosecution has also proved the injuries received by eye witness Savitaben.

6.3 The presence of Savitaben is natural inasmuch as she is the mother of the victim who is staying with him and on hearing the shouts she had rushed to the place of incident. Her presence is also established in view of the injuries received by her in the incident. She has fully narrated the incident in question and her version was supported by the evidence of Sumabhai Damjibhai Vasava (PW8) who had reached the place of incident at the earliest on hearing the shouts as he is staying with his wife very near to the house of deceased. As per his

evidence, he was informed that the appellant had assaulted both Savitaben and Dineshbhai and he narrated the role played by him thereafter, which fully corroborates the prosecution evidence.

7.0 The postmortem report in respect of Dineshbhai shows the following injuries:

1. Cut and lacerated wound over Rt.frontal scalp from internal 1 side of the Rt. Eye to upper part of frontal scalp size about 6 c.m.long 2.5 c.m. Bony deep with irregular margin, vertical direction.

2. Crushed injury over lower chin to lower lip, irregular margin blackish colour.

3. Mulitple abrasion over face below Rt. Eye to nose.

4. Abrasion with scab in Rt.lower part of middle and ring finger in between laceration swelling Rt. Hand.

5. Rt. Eyeball separated from socket.

6. Bluish upper and lower eyelids of Ltd. Eye.

8. Fracture of Rt. Side frontal bone.

9. Comminuted fracture of Nasal bone.

10. Complete fracture from middle of the mandible.

11. Comminuted facture of Rt and Lt. Maxillae.

12. Upper and lower incisor and canine tooth separated from socket.

7.1 According to the postmortem report, the cause of death was coma due to extradural haematoma and cerebral compression following crushed injury over the face. Therefore it was proved that it was an unnatural homicidal death.

7.2 The injuries on the person of deceased Dineshbhai shows that most of the injuries are on the vital part of the body. Looking to the injuries sustained by the deceased it is evident that the appellant has committed the offence with an intention to cause death of the deceased. It is required to be noted that when Savitaben interfered, she also received wooden log blows. The presence of the accused has been established from the evidence of the witnesses. It is well established that merely because eye witness is related to the victim, on that ground alone the evidence cannot be discarded.

8.0. A close scrutiny of the evidence of aforesaid witnesses along with other documentary evidence like discovery panchnama, serological report, postmortem report, etc. reveals that the cause of death was due to the wooden log blows given by the appellant and it is a homicidal death.

9.0 There are other evidence of witnesses on record which we are not discussing in view of the fact that the evidence of the above witnesses is sufficient enough to establish the case against the appellant.

10.0 On an evaluation of the entire evidence appearing on record, we are of the opinion that the prosecution was able to prove the case against the appellant-accused beyond doubt. We are, therefore, in complete agreement with the judgement and order of conviction and sentence passed by the Additional Sessions Judge, Surat, which does not call for any interference. In the result, the appeal deserves to be dismissed and is accordingly dismissed.

[R.P. DHOLAKIA, J.]

[K.S. JHAVERI, J.]

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